

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TAFT ELMORE,

Plaintiff,

V.

STUART THOMPSON; C.R.
ENGLAND, INC.; AND ABC
CORPORATIONS 1-3,

Defendant.

CIVIL ACTION

FILE NO.: _____

Fulton State Court Case No.:

23EV002569

DEFENDANTS' NOTICE OF REMOVAL

COME NOW, Defendants STUART THOMPSON and C.R. ENGLAND, INC. (hereinafter collectively as “Defendants”), by and through their counsel of record, and without waiving any defenses as to jurisdiction or proper party, hereby file this Notice of Removal, respectfully showing the Court as follows:

1.

This is a personal injury action filed by Plaintiff Taft Elmore ("Plaintiff") against Defendants in the State Court of Fulton county, State of Georgia, Civil Action File No. 23EV002569. It arises from a motor vehicle accident that occurred in Fulton County, Georgia. A copy of the Complaint and state court filings are attached hereto as Exhibit "A." Defendants' answer to Plaintiff's Complaint is

attached hereto as Exhibit "B."

Complete Diversity Jurisdiction Exists

2.

Upon information and belief, Plaintiff is a citizen of the State of Georgia.

3.

At the time of the filing of the Complaint, Defendant Thompson was, and currently is, a citizen and resident of the State of Ohio, residing at 30250 Jackson Road, Chagrin Falls, OH 44022.

4.

Defendant C.R. England, Inc. is a Utah corporation whose principal place of business is in the State of Utah, at 4701 W. 2100 S., Salt Lake City, UT, 84120. C.R. England, Inc.'s registered agent in the state of Georgia is CSC of Stephens County, Inc., which maintains an office at 597 Big A Road, Toccoa, GA 30577.

5.

Defendants have a good faith basis to believe that the amount in controversy exceeds \$75,000.00. Plaintiff has pled past medical expenses "in excess of \$68,500.00, in addition to claims for "emotional distress, personal inconvenience, mental and physical pain and suffering, loss of enjoyment of life, due to the violence of the collision and injuries to the Plaintiff's body and nervous system, plus an

inability to lead a normal life." (Pl. Cmplt., § 22). Plaintiff further included in his Prayer for Relief that Plaintiff recover "past and future medical expenses and loss of income in the past and future." (Id., Prayer for Relief). Defendants wrote to Plaintiff's counsel on May 30, 2023 and requested that, if the damages would not exceed \$75,000.00, Plaintiff sign a stipulation to limit damages to that amount and remain in state court (Exhibit "C"). Plaintiff's counsel did not respond to Defendants' request in the time allowed. Defendants accordingly believe that Plaintiff intends to seek damages which exceed \$75,000.00.¹

6.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332(a) because complete diversity exists between the parties and the amount in controversy, exclusive of interests and costs, exceeds \$75,000.00.

Removal is Timely

7.

With respect to removal on the basis of diversity jurisdiction, this removal is timely because it has been filed within thirty (30) days of any Defendant being served. This Notice of Removal is also timely because it is filed within thirty (30)

¹ Defendants will withdraw this removal and consent to remand if Plaintiff stipulates that her damages will not exceed \$75,000.00.

days after receipt by Defendants of a copy of the initial pleading setting forth the claim upon which this action is based. 28 U.S.C. § 1446(b). The parties being fully diverse, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a)(1).

Venue is Proper in the Northern District

8.

The United States District court for the Northern District of Georgia is the proper venue for removal under 28 U.S.C. § 1441(a) because the Northern District, Atlanta Division, encompasses Fulton County. See 28 U.S.C. § 90(a)(2).

The Unanimity Requirement is Met

9.

The Supreme Court has construed the removal statutes to require all defendants in a case to consent to removal, thus creating the so-called “unanimity requirement.” See Russell Corp. v. Am. Home Assurance Co., 264 F.3d 1040, 1050 (11th Cir. 2001), *citing* Chicago, Rock Island, & Pac. Ry. Co. v. Martin, 178 U.S. 245, 247-48 (1900)). Defendants are both represented by the undersigned counsel, and consent to removal of this case to this Court.

Removal is Proper

10.

No previous application for the relief sought herein has been made to this or

any other Court.

11.

Good and sufficient defenses to Plaintiff's claims exist.

12.

Now, within thirty (30) days after service on Defendants, notice is hereby given in accordance with 28 U.S.C. § 1446 and pursuant to Rule 11, Federal Rules of Civil Procedure, of the removal of said action to this Court.

13.

Defendants have given written notice of the filing of the Notice of Removal to Plaintiff and to the Clerk of State Court of Fulton County. A copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit "D."

WHEREFORE, it is hereby requested that this Court grant the removal of this case to the United States District Court for the Northern District of Georgia, in which district this suit is pending.

[Signature and date appear on following page]

Respectfully submitted this 8th day of June, 2023.

MCMICKLE, KUREY & BRANCH, LLP

/s/ Elenore C. Klingler

KEVIN P. BRANCH

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing pleading complies with the font and point selections approved by the Court in Local Rule 5.1C. This document has been prepared in Times New Roman font, 14 point.

/s/ Elenore C. Klingler
For the Firm

CERTIFICATE OF SERVICE

This is to certify that on this date I have electronically filed the foregoing **DEFENDANTS' NOTICE OF REMOVAL** with the Clerk of the Court using the *PACER CM/ECF* system, which will automatically send a notification attaching same thereon to the following counsel of record:

Tiffany M. Robinson, Esq.
MORGAN & MORGAN ATLANTA, PLLC
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Attorney for Plaintiff

This 8th day of June, 2023.

/s/ Elenore C. Klingler
ELENORE C. KLINGLER
For the Firm